CHAI CHIN FATT v. PUBLIC PROSECUTOR

[A. Cr. J. (Gunn Chit Tuan J.) March 12, 1984]
[Kuala Lumpur – Selangor Criminal Appeal No. 23 of 1983]

Criminal Law and Procedure – Plea of guilty – Record unclear – Two accused persons but record did not indicate who pleaded guilty – Joint plea – Bad and irregular.

In this case the appellant had been convicted of robbery and sentenced to 3½ years' imprisonment. He appealed against sentence but counsel for the accused referred to the record and asked the Court to exercise its power of revision. According to the records an unnamed accused appeared before the Magistrate on March 21, 1983 and pleaded guilty to the charge. The learned Magistrate found him guilty, convicted him and adjourned the case to April 7, 1983 for the facts of the case and sentence. However on April 7, 1983 it was recorded that "accused persons in person" were produced before the same Magistrate. There were pleas for mitigation by both the appellant and another person referred to as the first accused and both of them were sentenced.

Held: it was not clear from the notes of evidence whether it was the appellant or the other accused person who had pleaded guilty to the charge. The accused should have been asked if he maintained his plea of guilty and it should also have been recorded that the other accused also pleaded guilty to the charge. Acting in revision the Court set aside the conviction and sentence and ordered a re-trial.

Case referred to:

(1) *Fong Siew Poh & 3 Others* v. *Public Prosecutor* (1933) 1 M.C. 155.

CRIMINAL APPEAL.

Jagjit Singh for the appellant.

Miss Lee Ooi Kuan (Deputy Public Prosecutor) for the respondent.

Gunn Chit Tuan J.: The appellant was convicted and sentenced to 3½ years' imprisonment by the Magistrate's Court, Petaling Jaya, Selangor, on a charge under sections 392 and 397 of the Penal Code. He had filed an appeal against sentence only, but when Mr. Jagjit Singh argued the appeal before me on March 12, 1984, he drew my attention to page 7 of the appeal records containing the notes of evidence and asked me to exercise my powers of revision. He pointed out that according to the notes of evidence an accused person, whose name was not recorded, appeared before the Magistrate on March 21, 1983, and pleaded guilty to the charge. The learned Magistrate found him guilty, convicted him accordingly and adjourned the case to April 7, 1983, for the facts of the case and for sentence. But on April 7, 1983, it was recorded that "accused persons in person" were produced before the same Magistrate. There were pleas of mitigation by both the appellant and another person who was referred to as the first accused and both of them were sentenced to imprisonment.

However, it was not recorded on that day which of the two accused maintained his plea of guilty and that the other also wished to plead guilty to the charge against them. Learned counsel for the appellant referred to *Fong Siew Poh & 3 Ors.* v. *Public Prosecutor*(1) in which case Gerahty, J. (as he then was) held that a conviction based on a joint plea of guilty is bad and irregular. The charge should be explained to the accused and the plea of each accused person taken and recorded separately after the consequences of the plea where it is one of guilt have been explained and acknowledged by each accused. I agreed with counsel that it was not clear from the notes of evidence whether it was the appellant or the other accused person who had pleaded guilty to the charge on March 21, 1983. In any case whoever it was who had pleaded guilty on March 21, 1983, should have been asked by the Magistrate whether he maintained his plea of guilty on April 7, 1983, and it should also have been recorded that the other accused also pleaded guilty to the charge after it had been explained to him. The learned deputy did point out that the appellant had only appealed against sentence but in the circumstances of this case I considered that the Court should exercise its revisionary powers and therefore ordered that the conviction and sentence of the appellant should be set aside and that he should be re-tried by another Magistrate.

Order accordingly.

Solicitors: *Jagjit Singh & Co.*